

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ELECTRONICALLY
FILED
Dec 07 2022
U.S. DISTRICT COURT
Northern District of WV

ELEANORE DONOFRIO,

Docket No. 5:22-CV-302

Plaintiff,

(Bailey)

v.

Civil Action

MAGNA SERVICE AGENCY, INC.,

HARRY FERRELL,

JURY TRIAL DEMANDED

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant, Magna Service Agency, Inc. (“Magna”), by and through its attorneys, hereby removes this civil action from the Circuit Court of Ohio County, West Virginia, to the United States District Court For the Northern District of West Virginia, on the following averments and grounds:

1. On or about November 3, 2022 Plaintiff, Eleanore Donofrio, filed a civil action against Defendants Magna and Harry Ferrell in the Circuit Court of Ohio County, West Virginia, Civil Action Number 22-C-189. A true and correct copy of the Complaint, all items filed with the Circuit Court of Ohio County, West Virginia to date, and the docket for such civil action are attached hereto as “Exhibit A.”

2. Defendant Magna was served on November 14, 2022.

3. Upon information, Defendant Harry Ferrell has yet to be served.

4. The Complaint sets forth the following claims against Defendants Magna and Harry Ferrell in ten (10) Counts: violation of the West Virginia Human Rights Act, W.Va. Code § 5-11, *et seq.*; Negligent Hiring; Negligent Retention; Negligent Training; Intentional Infliction of

Emotional Distress; Negligent Infliction of Emotional Distress; and, Reprisal/Retaliation in Violation of Substantial Public Policy.

5. Upon information, Plaintiff is a resident of Weirton, Brooke County, West Virginia.

6. Defendant Magna is a Pennsylvania corporation with its offices and principal place of business located in Allegheny County, Pennsylvania. Defendant Magna has never maintained an office in the state of West Virginia. Therefore, Defendant Magna is not a citizen of West Virginia.

7. Defendant, Harry Ferrell, a former employee of Defendant Magna, at all times relevant to this civil action, was and remains a resident and citizen of Pennsylvania.

8. Because Plaintiff is a citizen of West Virginia, Defendant Magna is a Pennsylvania corporation with no offices in West Virginia, and Defendant Harry Ferrell is a Pennsylvania citizen, complete diversity exists under 28 U.S.C. § 1332. Complete diversity existed at the time of the filing of the Complaint, at the time of the filing of this Notice of Removal, and at all times in between.

9. This action is not a “non-removable action” under 28 U.S.C. § 1445.

10. The parties agreed to an extension until December 30, 2022 for Defendant Magna to answer or otherwise respond to the Complaint via email correspondence. A true and correct copy of said email correspondence is attached hereto as “Exhibit B.”

11. This Notice of Removal is timely filed before the agreed upon date of December 30, 2022 and is timely filed under the thirty-day period for removal set by 28 U.S.C. § 1446(b)(2)(B) and pursuant to Rule 6 of the Federal Rules of Civil Procedure.

12. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391 as Plaintiff lives in Brooke County, West Virginia, did not have a fixed work location in the course of her

employment by Defendant Magna, and did not provide services as an employee of Defendant Magna within the state of West Virginia.

13. If the allegations in Plaintiff's Complaint are found to be true, the amount in controversy exceeds the jurisdictional minimum of \$75,000. 28 U.S.C. § 1332(a).

14. As demonstrated by value estimations made in email correspondence, Plaintiff's wage loss is alleged to be approximately \$52,000. Plaintiff is also seeking damages for mental and emotional distress at a value of approximately \$25,000. Together, these figures exceed the jurisdictional minimum of \$75,000. When calculating the amount in controversy as being inclusive of potential punitive damages and attorney fees, the value of this claim only continues to rise above the jurisdictional minimum amount. A true and correct copy of said email correspondence is attached hereto as "Exhibit C."

15. Therefore, Defendant Magna may remove the state court action to this Court, in accordance with the provisions of 28 U.S.C. § 1441 because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Northern District of West Virginia; (ii) this civil action is between citizens of different states and, (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

16. Promptly after filing this Notice, and pursuant to 28 U.S.C. § 1446(d), Defendant Magna will serve written notice of this removal on Plaintiff and file a Notice of Filing of Notice of Removal, including a true and correct copy of this Notice of Removal, with the Clerk of the Circuit Court of Ohio County, West Virginia. A copy of Defendant's proposed Notice of Filing is attached as Exhibit D."

17. By removing this civil action, Defendant Magna neither admits any of the allegations in the Complaint, nor waives any available defenses and/or objections.

18. The undersigned counsel is authorized by Defendant Magna to file this Notice of Removal, is licensed to practice law in the state of West Virginia, and is a member in good standing of the Bar of this Court.

WHEREFORE, Defendant Magna Services Agency, Inc., respectfully requests that the action brought against it by Plaintiff, Eleanore Donofrio, in the Circuit Court of Ohio County, West Virginia at Docket No. 22-C-189 be removed to this Honorable Court.

Dated: December 7, 2022.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF REMOVAL was served on the 7th day of December 2022, via U.S. Mail and/or electronic mail, on the following:

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